

**STATE OF CALIFORNIA
CEMETERY AND FUNERAL BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: December 17, 2002

Subject Matter of Proposed Regulations: Disclosure of Preneed Funeral Arrangements

Sections Affected: Title 16, California Code of Regulations, Division 12, Sections 1258.4, 1277, and 1284.5.

SPECIFIC PURPOSE

Existing law, the Funeral Directors and Embalmers Law, provides for regulation of funeral directors and other licensees by the Cemetery and Funeral Bureau of the Department of Consumer Affairs (Bureau). Existing law requires specified information to be included in a funeral establishment's price list, requires a consumer guide to be provided in certain situations, and prescribes penalties for violations of these and various other provisions.

Legislation enacted in 2001 (Stats.2001, ch. 715, AB 1277, Cardenas) requires a statement to be included on a funeral establishment's price list providing that the survivor of the deceased or the responsible party is entitled to receive a copy of any preneed funeral arrangement contract paid for by or on behalf of the deceased. The new law also requires the Cemetery and Funeral Bureau to develop a form and regulations containing certain information that would be required to be provided to consumers by a funeral establishment prior to the drafting of a contract for funeral services. The legislation requires this form to be signed and dated by the consumer and a representative of the funeral establishment.

Both the enabling statute and proposed regulations provide that families shall be given additional disclosure information in connection with funeral arrangements, and requires the information to be on a form separate from other forms required pursuant to existing law. Specifically, the regulations require:

(1) Funeral service providers to place a statement on price lists indicating that survivors of the deceased are entitled to a copy of any preneed funeral arrangements made by the deceased before his or her death.

(2) Require the Bureau to develop a form, in consultation with the funeral industry and interested parties, that is separate from other forms, easy to read, and includes specified information. Requires the Bureau to make the form available to funeral providers for purposes of reproduction and distribution.

(3) Require the price list furnished by the funeral director to

include a statement that discloses to the survivor of the deceased, or responsible party handling the funeral arrangements, that they are entitled to receive, prior to drafting any contract, a copy of any relevant preneed contract in the possession of the funeral establishment.

(4) Require every funeral establishment, prior to drafting any contracts for funeral goods or services, to present to the survivor of the deceased, or responsible party who is handling the funeral arrangements, a statement disclosing whether or not the funeral establishment has any preneed agreement made by or on behalf of the deceased. Additionally, if the funeral establishment has an executed preneed contract made by or on behalf of the deceased, the statement also shall declare the establishment's compliance with existing law.

(5) Specify that the disclosure statement shall be signed and dated by both parties and a copy of the signed statement shall be given to the survivor or responsible party handling the funeral arrangements. The completed disclosure statement shall be retained by the funeral establishment for a period of time determined by the Bureau.

Existing law requires funeral directors and embalmers to provide persons making funeral arrangements, at the beginning of a counseling session, with a current written or printed price list identifying funeral goods and professional services offered by the provider.

The purpose of the statute and proposed regulations is to ensure that families are informed of their right to the disclosure of any prior arrangements made by or on behalf of the deceased and the funeral provider, and to provide families with additional information they may need to arrange a suitable funeral. Families in mourning should not be placed in a position where they are made to unknowingly pay for services that may already have been agreed to or paid prior to their loss.

Title 16, California Code of Regulations, section 1258.4:

The proposed regulation would specify the exact language notifying consumers (survivors and responsible parties) that a copy of the preneed arrangements is available and where the required statement is to be placed on the general price list required by Business and Professions Code section 7685(b).

Title 16, California Code of Regulations, section 1277:

The proposed regulation would provide a definition for "preneed arrangement," "preneed agreement," and "preneed." The proposed regulations require a copy of any preneed agreement made on behalf of a decedent (that is paid for in full or in part) and is in the possession of the funeral establishment must be disclosed and presented to the survivor or responsible party handling the funeral arrangements.

Title 16, California Code of Regulations, section 1284.5:

The proposed regulation would specify the "Disclosure of Preneed Funeral Agreement" form that the Bureau shall provide to funeral establishments. In addition, the proposed regulation specifies the funeral establishment's responsibilities under Section 7745 and the period of time that a funeral establishment is required to retain the required forms.

FACTUAL BASIS

Legislation enacted in 2001 (Stats.2001, ch. 715, AB 1277, Cardenas) requires a statement to be included on a funeral establishment's price list providing that the survivor of the deceased or the responsible party is entitled to receive a copy of any preneed funeral arrangement contract paid for in part or in full by or on behalf of the deceased. The new law also requires the Cemetery and Funeral Bureau to develop a form and regulations containing certain information that would be required to be provided to consumers by a funeral establishment prior to the drafting of a contract for funeral services.

Specifically, Business and Professions Code section 7685.5, subdivision (b), provides the following:

"The bureau shall develop a form, in consultation with the funeral industry and any other interested parties, that is separate and distinct from other forms, upon which the disclosure statement shall be made. The bureau shall make the form available to funeral establishments for purposes of reproduction and distribution, and the form shall also be available electronically through the Internet. The form shall be simple and easy to read and shall include all of the following:

- (1) The definition of a preneed arrangement, adopted by the bureau by regulation.
- (2) A statement of the funeral establishment's responsibilities under Section 7745.
- (3) Information about how the consumer may contact the bureau for more information or how to file a complaint against a licensee.

UNDERLYING DATA

Statutes 2001, chapter 715, AB 1277 (Cardenas)

BUSINESS IMPACT

These regulations will not have a significant adverse impact on business. However, the proposed regulations will affect all funeral establishments

SPECIFIC TECHNOLOGIES OR EQUIPMENT

These regulations do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Bureau determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.